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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/084,833	02/26/2002	Frederick L. Jordan	HO-P0291US8	4096
26271	7590	12/15/2004	EXAMINER	
FULBRIGHT & JAWORSKI, LLP			TOOMER, CEPHIA D	
1301 MCKINNEY			ART UNIT	
SUITE 5100			PAPER NUMBER	
HOUSTON, TX 77010-3095			1714	

DATE MAILED: 12/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/084,833

Applicant(s)

JORDAN, FREDERICK L.

Examiner

Cephia D. Toomer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 25-50, 52-60 and 62-77 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 43-50, 52-60 and 70-77 is/are allowed.
- 6) ☒ Claim(s) 25-28, 34-36, 40, 62 and 65-68 is/are rejected.
- 7) ☒ Claim(s) 29-33, 37-39, 41, 42, 63, 64 and 69 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 12, 2004 has been entered.
2. This Office action is in response to the amendment filed August 31, 2004 in which claims 32-34, 38, 52, 59, 62, 66, 70 and 76-77 were amended and claims 51, 61 and 78 were canceled. It should be noted that in Applicant's remarks reference is made to claim 49 being amended. However, the claim identifier for 49 does not indicate that the claim has been amended.
3. The rejection of claims 34 and 37-40 under 35 USC 102(b) as anticipated by Jordan (US 5,862,369) is withdrawn in view of the amendment to the claims.
4. Claims 62 and 65-68 under 35 U.S.C. 102(b) as anticipated by Jordan (US 5,862,369) for the reasons of record.
5. Claims 25-28, 34-36 and 40 are rejected under 35 USC 103(a) as being unpatentable over Kirk (US 5,023,095).

Kirk teaches a composition comprising beta-carotene (carotenoid), at least one edible oil (plant extract and thermal stabilizer) and dl-alpha-tocopherol (antioxidant/stabilizer) (see abstract; col. 2, lines 17-24). The edible oil may be selected from coconut, palm, olive, peanut (a member of the Leguminosae family), and corn

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(grain). Kirk teaches that the oils may be used in combination (see col. 3, lines 22-28).

Kirk also teaches that dl-alpha-tocopherol is an antioxidant (see col. 3, lines 47-50).

Kirk teaches the limitations of the claims other than the differences that are discussed below.

In the first aspect, Kirk differs from the claims in that she does not specifically teach applicant's intended use. However, intended use is given no patentable weight in claims that are directed to the composition per se.

In the second aspect, Kirk differs from the claims in that she does not teach that the edible oils function as thermal stabilizers. However, given that Kirk teaches some of the same oils as applicant in combination with beta-carotene, it would be reasonable to expect that oils would function in this capacity. Furthermore, a compound and its properties are inseparable. *In re Papesch*. 137 USPQ 43 (CCPA 1963).

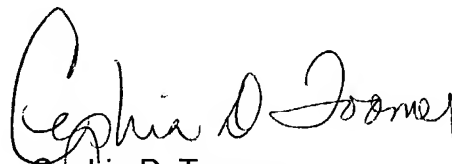
Claims 29-33, 37-39, 41-42, 63, 64, 69 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art fails to teach or suggest the claimed plant oil extract, thermal stabilizer, diluents and fuel additives.

Claims 43-50, 52-60, 70-77 are allowed because the prior art fails to teach or suggest a fuel additive wherein the plant extract is as set forth in claim 43 or the claimed fuel composition comprising a base fuel, plant oil extract derived from grain, a carotenoid and a thermal stabilizer.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cephia D. Toomer whose telephone number is 571-272-1126. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on 571-272-1119. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Cephia D. Toomer  
Primary Examiner  
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